



**Director of Public Prosecution v Wafula (Criminal Case
E033 of 2025) [2025] KEHC 6791 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6791 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E033 OF 2025**

S MBUNGI, J

MAY 26, 2025

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

PATRICK WAFULA ACCUSED

RULING

1. The accused person, Patrick Wafula, was charged on 29.04.2025 with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. A plea of not guilty was entered. Defence Counsel, Mr. Ogolla, made an oral application to the court, praying that the accused person be released on favorable bail/bond terms. He told the court that the accused was crippled, having been rescued from a mob justice beating. He further submitted that the accused person would attend court when so required.
3. Prosecution Counsel, Ms. Osoro, prayed that the court calls for a pre-bail report before granting bond for the ground was hostile.
4. I ordered that a pre-bail report be filed to assist the court in making its determination.
5. Owing to the accused's physical condition, the matter was expedited and on 13th May, 2025 a pre-bail report was filed by Senior Probation Officer, Kakamega County in which he recommended that stringent bond terms be imposed on the accused person.
6. The court's power to grant bond is provided for under Section 123 of the [Criminal Procedure Code](#), the discretion is not absolute but is informed by considerations set out under Section 123 as read with the Bail and Bond policy guidelines and further circumstances which apply on a case to case basis. Therefore, issues for determination in the accused application are:-
 - i. Whether the accused is a flight risk



- ii. Whether the accused lacks a place of abode and cannot be traced if released
 - iii. Whether the accused security would be at risk
 - iv. Whether the accused would interfere with witnesses
 - v. Whether the conclusion in the inquest form compelling reasons to deny him bond.
7. Article 49 (1) (h) of *the Constitution* grants an accused person the right to be released on bond or bail on reasonable conditions pending the hearing and determination of his trial. It states as follows;
- An arrested person has the right –
- h. to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.
8. Section 123A of the *Criminal Procedure Code* provides;
- (1) Subject to Article 49(1)(h) of *the Constitution* and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—
 - (a) the nature or seriousness of the offence;
 - (b) the character, antecedents, associations and community ties of the accused person;
 - (c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;
 - (d) the strength of the evidence of his having committed the offence;
 - (2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person -
 - (a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
9. The right to bail and bond is premised on the accused person's right to be presumed innocent until proved guilty as no evidence has been placed before this Court yet on their culpability and the accused person's right to liberty. In deciding whether or not to grant bond, the court is guided by the following principles:-
- (a) The right of the accused to be presumed innocent.
 - (b) The accused person's right to liberty.
 - (c) The accused's obligation to attend trial.
 - (d) The right to reasonable bail and bond terms.
 - (e) That bail determination must balance the rights of the accused persons and the interest of justice.
 - (f) Consideration of the rights of the victims



10. The Court has discretion to grant or refuse bail depending on the circumstances of each case. The Court is required to take into consideration settled principles of the law when determining whether or not to grant bail pending the hearing of a criminal case.
11. In Republic Vs. William Mwangi Wa Mwangi [2014] eKLR ,Muriithi, J held that:

“It is now settled that in the event that the state is opposed to the grant of bail to an accused person it has the onus of demonstrating that compelling reasons exist to justify denial of the Constitutional right to bail...It is trite that the cardinal principle which the court should consider in deciding whether to grant bail is whether the accused will turn up for his trial and whether there are substantial grounds to believe that he is likely to abscond if released on bail.”
12. Similarly, in the case of Kelly Kase Bunjika v Republic [2017] eKLR the Court had this to say: -

“It is clear that the primary consideration for bail is whether the accused will attend his trial for charges facing him and it must therefore be a compelling reason if it is demonstrated that the accused person is likely to fail to attend court proceedings. The question in this matter becomes whether there is on a balance of probabilities evidence that the accused is likely to abscond.”
13. In Nyeri High Court Criminal Case No. 8 of 2016 Republic vs Danford Kabage Mwangi the criteria or compelling reasons to consider in the exercise of judicial discretion in bail applications were set out to include:
 - i. The nature of the charges.
 - ii. The strength of the evidence.
 - iii. The gravity of the punishment in the event of conviction.
 - iv. The previous criminal record of the accused, if any.
 - v. The probability that the accused may not surrender himself for trial.
 - vi. The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him.
 - vii. The likelihood of further charges being brought against the accused.
 - viii. Detention for the protection of the accused.
14. A pre-bail report acts as a guide to the Court when considering the suitability of an accused person whether to be released on bail and/or bond. However, the pre-bail report is not the final say.
15. According to the Pre-bail report on record, the accused person is a well-known teacher by profession. He has no previous criminal record. This however, does not attenuate the gravity of the current charge which is murder.
16. The accused person’s family have expressed their support and willingness to secure bond on his behalf. The victim’s family have expressed their fear that the accused person, if released on bond, might interfere with key witnesses, who are his neighbors, and might feel intimidated by the accused person. Albeit this is a valid concern, I note that the accused person’s family have already arranged alternative accommodation for him away from his primary residence where he can stay, If he is released on bond.



Further the prosecution has not tendered any evidence to suggest that the accused person herein is unlikely to attend Court or is likely to interfere with the prosecution witnesses.

17. On the issue of hostility on the ground raised by the prosecution, It is trite law that the security of the accused person starts with him. He has not expressed any concerns regarding his security to the court. Owing to this fact, and the fact that his family members are ready to relocate the accused person if released, I find that this reasonably allays the earlier adduced reason by the prosecution that there is hostility on the ground.
18. I also note that the accused person is crippled. He cannot walk and thus, I think it would be prudent if he is released to his family who can take better care of him, provide him with the necessary healthcare which might be inaccessible in prison.
19. Consequently, I find that no compelling reasons have been adduced by the prosecution to enable the Court deny the accused person the enjoyment of their constitutional right to bail as they can be mitigated through appropriate bond and bail terms.
20. Now, the question is, what bond terms are appropriate? Paragraph 3.1. (d) of the Bail and Bond Policy Guidelines (at page 9) it is provided that:
 - d)“ ...Bail or bond amounts and conditions shall be reasonable, given the importance of the right to liberty and the presumption of innocence. This means that bail or bond amounts and conditions shall be no more than is necessary to guarantee the appearance of an accused person for trial. Accordingly, bail or bond amounts should not be excessive, that is, they should not be far greater than is necessary to guarantee that the accused person will appear for his or her trial.
21. Conversely, bail or bond amounts should not be so low that the accused person would be enticed into forfeiting the bail or bond amount and fleeing. Secondly, bail or bond conditions should be appropriate to the offence committed and take into account the personal circumstances of the accused person.
22. Having considered the circumstances of the case, the gravity of the offence, the pre-bail report, and the physical conditions of the accused, I order as follows:
 - I. The accused be released on a bond of Kshs.500,000/- with one surety of a like sum .
 - II. To balance out the interests of parties, the accused person is barred from contacting witnesses either directly or indirectly.
 - III. Hearing on 23.9.2025

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 26TH DAY OF MAY, 2025

S.N MBUNGI

JUDGE

